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SJC-12379

LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND ECONOMIC JUSTICE vs.
COURT ADMINISTRATOR OF THE TRIAL COURT & others.¹

November 6, 2017.

Moot Question. Practice, Civil, Moot case. Trial Court.
Public Records.

The Lawyers' Committee for Civil Rights and Economic Justice (Lawyers' Committee) appeals from a judgment of the county court dismissing as moot its petition seeking declaratory and injunctive relief requiring the respondents, who are the court administrator, office of court management, and executive office of the Trial Court, to produce certain records pursuant to the public records law. G. L. c. 66, § 10. We directed the parties to file memoranda addressing whether the single justice erred or abused his discretion in dismissing the case as moot. After reviewing the parties' submissions, we affirm the judgment.

The facts are not in dispute. The Lawyers' Committee requested that the respondents produce documents concerning the demographics of the security department of the Trial Court, by race and gender, and the department's hiring and promotion practices. The Lawyers' Committee cited the public records law, G. L. c. 66, § 10, as the basis of its request. In response, the respondents stated that "[a]s part of the [j]udicial branch of government, the Massachusetts Trial Court . . . is not

¹ Office of court management of the Trial Court and executive office of the Trial Court.

subject to the [p]ublic [r]ecords [l]aw.^[2] . . . Despite that exemption, we are considering your request and will respond appropriately in due course." The Lawyers' Committee petitioned the supervisor of records for a determination that the requested records were public records under G. L. c. 66. The supervisor of records responded that "[r]ecords in the custody of the [c]ourt are records of the judiciary and are outside the jurisdiction of the public records law." Some months later, having received no documents in response to its request, the Lawyers' Committee filed its petition. Thereafter, the court administrator wrote to the Lawyers' Committee, stating that the Trial Court intended to collect responsive documents and produce them.³ The respondents did in fact voluntarily produce documents that were responsive to the Lawyers' Committee's request.

The respondents represent, as they did before the single justice, that they have produced all responsive documents in their possession, custody, or control that are not confidential or privileged. The Lawyers' Committee does not dispute this or claim that any documents are being wrongfully withheld. There is nothing further that a court can order the respondents to produce. In these circumstances, the single justice properly dismissed the petition as moot, as no further effective relief can be granted. See, e.g., Padmanabhan v. Centers for Medicare & Medicaid Servs., 476 Mass. 1018, 1019 (2017), citing Rasten v. Northeastern Univ., 432 Mass. 1003, 1003 (2000), cert. denied, 531 U.S. 1168 (2001) (request that single justice stay Superior Court proceedings moot where Superior Court granted continuance); McCants v. Clerk of Suffolk Superior Court for Criminal Business, 465 Mass. 1007, 1007-1008 (2013) (petition properly dismissed as moot where petitioner received relief he was seeking). The fact that the Lawyers' Committee has also sought a declaratory judgment concerning the applicability of the public records law to the respondents does not alter the

² We have held, and the regulations promulgated by the supervisor of public records likewise recognize, that the public records law applies only to the executive branch, and not to the Legislature or the judiciary. Kettenbach v. Board of Bar Overseers, 448 Mass. 1019, 1020-1021 (2007). See also 950 Code Mass. Regs. § 32.02 (2016). In this respect, the public records law is consistent with the Federal Freedom of Information Act, which applies only to the executive branch of the Federal government. See 5 U.S.C. §§ 551(1), 552(f).

³ The court administrator attributed the delay to "miscommunication."

outcome, as there is no longer any actual controversy. See Boston Herald, Inc. v. Superior Court Dep't of the Trial Court, 421 Mass. 502, 504 (1995), quoting Quincy City Hosp. v. Rate Setting Comm'n, 406 Mass. 431, 439 (1990) ("Declaratory judgment . . . 'is a vehicle for resolving actual, not hypothetical, controversies'").

Any remaining questions concerning the applicability of the public records law to the respondents will be ripe for adjudication if, at some point in the future, a party requests documents pursuant to the public records law and the respondents withhold responsive documents. In such a case, there would be a real controversy over what, if anything, the respondents are obligated to produce. There is no reason to suppose, if and when that happens, that "appellate review could not be obtained before the recurring question would again be moot." Libertarian Ass'n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 548 (2012), quoting Commissioner of Correction v. McCabe, 410 Mass. 847, 851 (1991). In short, while the issue is capable of repetition, it will not necessarily evade review in the ordinary course of events.

Here, where the respondents have produced everything the Lawyers' Committee has requested, the single justice did not err or abuse his discretion by dismissing the petition as moot.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by memoranda of law.

Julia Huston, David Kluft, Zachary Gerson, & Oren Sellstrom for the petitioner.

Timothy J. Casey, Assistant Attorney General, for the respondents.